

concluded that Ameritech's commitment to underwrite ACI's activities provides a sufficient basis for finding that ACI has adequate financial resources to conduct its proposed operations.

In discussing the issue of whether granting ACI's application would be detrimental to the public interest, the ALJ focused on whether granting the application would increase or decrease the level of competition in the marketplace. Moreover, the ALJ stressed that the precise market that the Commission should scrutinize is the market for all telecommunication services. Indeed, the ALJ emphasized that the result reached by the Commission in this proceeding should maximize competition across the entire spectrum of telecommunication services.

In analyzing this issue, the ALJ noted that a number of strong competitors, including TCG, Sprint, MCI, and AT&T, are providers of intraLATA and interLATA services in Michigan. The ALJ also noted that Ameritech Michigan and GTE are dominant providers of basic local exchange service in their respective service areas and may also have a distinct advantage over competitors with regard to the provision of intraLATA service in their service territories due to the lack of dialing parity at this time.

Although acknowledging that Ameritech Michigan and GTE currently face few, if any, effective competitors in the marketplace for basic local exchange service, he was persuaded that within a relatively short period of time procedures contained in the FTA and the MTA would ensure that new entrants, such as AT&T, MCI, and TCG, could compete on a more effective basis. Indeed, the ALJ found it reasonable to assume that, in the near future, traditional long distance companies would be able to offer a full range of telecommunication services.

Although acknowledging that Ameritech Michigan would remain the dominant force in the local exchange market, the ALJ observed that the FTA requires ACI to be a truly separate

subsidiary and to conduct all transactions with Ameritech Michigan on an arm's-length basis. Further, the ALJ was persuaded that most of the anticompetitive behavior feared by the intervenors is already banned by existing law and found that it would be reasonable to assume that ACI would not violate any of the provisions of the FTA and the MTA. Moreover, the ALJ noted that even if a violation were to occur in the future, the Staff and intervenors have not demonstrated that existing enforcement provisions are inadequate to remedy any situation that might develop. Furthermore, the ALJ concluded that Ameritech, Ameritech Michigan, and ACI have little, if any, incentive to engage in cross-subsidization or discrimination.

Finally, noting that AT&T, MCI, and TCG intend to offer their customers bundled packages of local and long distance services, the ALJ was persuaded that ACI would be a weaker competitor if it were not permitted to offer similar packages of bundled services to its customers. Indeed, in the ALJ's view, the restrictions suggested by the Staff and intervenors are tantamount to an effort to handicap ACI's ability to compete as an offset to advantages that were garnered during an era of regulation. Consequently, the ALJ concluded that the marketplace for telecommunication services would be more competitive, and the public interest would be better served, by allowing ACI to provide a complete range of telecommunication services, including basic local exchange service, without the restrictions proposed by the Staff and intervenors.

#### IV.

#### DISCUSSION

Section 302(1) of the MTA provides that the Commission shall approve an application for a license to provide basic local exchange service if the Commission finds both of the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license. MCL 484.2302(1)(a); MSA 22.1469(302)(1)(a).

(b) The granting of a license to the applicant will not be contrary to the public interest. MCL 484.2302(1)(b); MSA 22.1469(302)(1)(b).

The exceptions to the PFD fall into three groupings. First, several parties continue to question whether ACI has the requisite technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license. Second, all the parties that filed exceptions challenge the ALJ's finding that granting a license to ACI without additional safeguards would not be contrary to the public interest. Third, the exceptions contain numerous arguments urging the Commission to place a variety of conditions on any license granted to ACI in order to preclude Ameritech, Ameritech Michigan, and ACI from engaging in a broad assortment of anticompetitive activities.

#### ACI's Technical, Financial, and Managerial Resources and Abilities

The exceptions filed by Comcast and the Staff raise the issue of whether the proofs submitted by ACI support a finding that ACI possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license it is seeking. Comcast's exceptions address the issue directly. According to Comcast, the ALJ was obviously uncomfortable in reaching his recommendation on this issue. Citing the PFD's concerns regarding the lack of knowledge of ACI's proposed operations on the part of one of its witnesses, Comcast insists that the ALJ reluctantly found that ACI possessed the technical, financial, and managerial resources and abilities required by the MTA. Comcast urges the Commission not to be as charitable as the ALJ. Indeed, Comcast

suggests that ACI's failure to provide the Commission with sufficient evidence on this issue constitutes a deliberate pattern of omission and deception. Accordingly, Comcast urges the Commission to deny ACI's application.

The Staff stresses that ACI submitted very little information regarding its financial capabilities or managerial resources. While speculating that ACI's lack of depth on this issue may have been due to uncertainty regarding details of its business plan, which has not been finalized, the Staff also believes that ACI should have been able to provide the Commission with a far greater understanding of its technical, financial, and managerial resources. Nevertheless, despite its criticisms of ACI's proofs, the Staff states that it reluctantly concurs with the PFD's conclusion on this issue.

In its reply to exceptions, ACI maintains that the ALJ's finding that it possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service is clearly supported by the record. Indeed, ACI maintains that the ALJ's finding is so self-evident that AT&T and MCI conceded in their petitions to intervene that they would not challenge ACI's application on this issue.

The Commission finds that Comcast's exceptions should be rejected. ACI's proofs establish its commitment to provide high-quality basic local exchange service throughout the geographic area described in its license. Additionally, ACI has provided the Commission with an outline of the technical, financial, and managerial resources and abilities that it intends to utilize to provide the services described in its application. The testimony establishes that ACI's parent, Ameritech, is well positioned to commit sufficient technical, financial, and managerial resources to support ACI's operations. Initially, ACI intends to provide basic local exchange service as a

reseller. While this means that ACI will rely primarily upon underlying local service from Ameritech Michigan and GTE to provide high quality service in a timely manner, ACI intends to explore alternative means to provide local service if for any reason the underlying local service provider is unable to fulfill ACI's commitment to providing service to its customers.

ACI's witnesses testify that Ameritech will stand behind the financial obligations of ACI and will provide sufficient financial resources for it to procure, install, and operate all of the services and facilities required to provide a wide array of services for its customers. Indeed, the testimony indicates that, to date, ACI has received approximately \$90 million from Ameritech to further its strategic objectives. Moreover, there is nothing in the record to indicate that Ameritech will retreat from its avowed support of ACI's operations.

Finally, the Commission notes that the managerial team assembled to operate ACI appears to possess sufficient experience and ability. Collectively, ACI's officers average more than 20 years of experience in their respective fields. Most have had lengthy experience in the telecommunication industry. In addition to the detailed information provided regarding ACI's senior management team, the company also indicated that in excess of 200 employees with dedicated ACI responsibilities had been hired to date. These employees were described as being very experienced in business with an average of almost 14 years of managerial and technical experience, most of which is in the telecommunication industry.

Given these proofs, the Commission is persuaded that ACI has demonstrated that it will have the technical, financial, and managerial resources and abilities required by Section 301(1)(a) of the MTA.

### The Scope of the Public Interest

The most frequently raised criticism of the PFD involves the ALJ's determination that ACI's application should be viewed in light of its effect upon the market for all telecommunication services, not simply the local exchange market. The Staff and intervenors maintain that the ALJ's focus upon the broader telecommunication marketplace is misplaced. They argue that Section 302(1)(b) specifically involves basic local exchange service. They insist that the Commission has no statutory authority to base its decisions regarding licensing of providers of basic local exchange service on the effect that granting or denying such a license will have on the broader marketplace of all telecommunication services. Arguing that the Commission has no jurisdiction over the provision of interLATA service, they insist that the focus of this proceeding must be limited to considerations regarding the local exchange market.

In reply, ACI argues that the public interest cannot be neatly segmented into artificial categories. According to ACI, the Commission should not ignore the desires of telecommunications customers in considering the public interest. In making this argument, ACI focuses upon testimony that most customers prefer to purchase a package of telecommunication services from a single provider. Indeed, ACI stresses that AT&T, MCI, and TCG have either sought or obtained licenses to provide basic local exchange service so that they may offer the public a bundle of services and one-stop shopping. Accordingly, ACI maintains that if basic local exchange service is going to be offered by other providers as a part of a bundle of services, then it follows that ACI should be able to offer basic local exchange service in the same manner, which will have the effect of increasing competition in the local exchange market.

In previous Section 302 license application proceedings, the Commission focused on the issue of whether the addition of a new entrant into the local exchange market would enhance competition in that market to determine whether granting the application would be contrary to the public interest. However, the unique facts of this case necessitate a broader focus.

ACI's application and supporting testimony rest on the premise that ACI will be a one-stop provider of bundled local, intraLATA, and interLATA services. Indeed, it is quite clear from the testimony of ACI's witnesses that ACI did not apply for a license to provide basic local exchange service in competition with Ameritech Michigan. According to ACI, it is simply endeavoring to craft a business model that will allow it to compete against AT&T, MCI, Sprint, and other long distance carriers that intend to market bundled local and long distance services and Ameritech Michigan and ACI will have a vendor-purchaser, not a competitive, relationship.

For this reason, ACI tailored its proofs to support a finding that its one-stop shopping strategy would not be contrary to the public interest and its proofs focus on whether its entry into the market will enhance competition among companies providing bundled local, intra-LATA, and interLATA services. Its proofs do not adequately address the effect that a grant of ACI's application with regard to Ameritech Michigan's service area will have on the local exchange market in the event that the FCC does not authorize ACI to provide interLATA service.

A major problem with ACI's proofs is that they concentrate on only one of two possible scenarios. While ACI may ultimately receive authorization from the FCC to provide inter-LATA service in conjunction with local exchange and intraLATA services, the FCC has not addressed this issue and the possibility exists that the FCC's final determination on this issue may not be favorable to ACI. Moreover, even assuming that ACI will prevail before the FCC,

there is no evidence to suggest that the FCC will take action to authorize ACI to provide inter-LATA service in the near future. Indeed, the record establishes a distinct likelihood that if the application in this proceeding were granted without conditions, ACI would be in possession of a license to provide basic local exchange service in Ameritech Michigan's service area for a considerable length of time before it receives authorization from the FCC to provide interLATA service. Because ACI's witnesses indicated that their company would commence operations as soon as it received a license to provide basic local exchange service from this Commission, the Commission is persuaded that it must address not only the issue of whether it is contrary to the public interest to license ACI to provide basic local exchange service in conjunction with inter-LATA service, but also the question of whether it is contrary to the public interest for Ameritech Corporation to possess two licenses to provide basic local exchange service in the same service area through two separate subsidiaries when the evidence establishes that Ameritech Michigan and ACI will not be competitors.

The initial scenario that will be considered involves a determination of whether it would be contrary to the public interest for the Commission to grant ACI a license to provide basic local exchange service in Ameritech Michigan's service area prior to receiving authority to provide interLATA service. In considering this issue, the Commission finds that the appropriate benchmark for determining the effect that a grant or denial of ACI's application will have on the public interest is contained in MCL 484.2101(2); MSA 22.1469(101)(2), which reads as follows:

- (2) The purpose of this act is to do all of the following:
  - (a) Ensure that every person has access to basic residential telecommunication service.
  - (b) Allow and encourage competition to determine the availability, prices, terms, and other conditions of providing telecommunication services.



- (c) Restructure regulation to focus on price and quality of service and not on the provider. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide safeguards for competition and consumers.
- (d) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state through incentives to providers to offer the most efficient services and products.
- (e) Improve the opportunities for economic development and the delivery of essential services including education and health care.
- (f) Streamline the process for setting and adjusting the rates for regulated services that will ensure effective rate review and reduce the costs and length of hearings traditionally associated with rate cases.
- (g) Encourage the use of existing educational telecommunication networks and networks established by other commercial providers as building blocks for a cooperative and efficient statewide educational telecommunication system.
- (h) Ensure effective review and disposition of disputes between telecommunication providers.

MCL 484.2101(2); MSA 22.1469(101)(2).

Section 101(2) of the MTA does not focus exclusively upon the level of competition or the number of competitors found in any particular marketplace. Rather, it indicates the Legislature's determination that the public interest involves many other factors, such as the introduction of new services, the entry of new providers, the development of new technologies, and increased investment in the telecommunication infrastructure. Accordingly, the Commission is persuaded that the proper focus in this proceeding should be upon all of the factors set forth in Section 101(2) of the MTA, not simply issues regarding the effect that one additional licensee will have on competition in a particular segment of the telecommunication market.

Despite this broader focus, the Commission is not persuaded that ACI has carried its burden of proof on this issue.<sup>1</sup> Dr. Lee L. Selwyn, President of Economic and Technology, Inc., of

---

<sup>1</sup>Section 203(3) of the MTA places the burden of proof on ACI to establish that granting its application will not be contrary to the public interest.

Boston, Massachusetts, testified on behalf of AT&T that, as sister corporations, Ameritech Michigan and ACI will each have strong incentives to cooperate in numerous ways so as to maximize the total profits and value of their mutual parent, Ameritech Corporation. According to Dr. Selwyn, Ameritech Michigan and ACI will work together to manage the local exchange market through the creation of a de facto cartel. Additionally, Dr. Selwyn explained that Ameritech Michigan and ACI could effectively force existing Ameritech Michigan customers to migrate to ACI simply by adjusting their respective prices to target the desired customer segments.

He also explained how Ameritech Corporation could respond better to emerging competition through ACI than through Ameritech Michigan. According to Dr. Selwyn, because competitive responses from Ameritech Michigan would have to be offered to a broad range of customers, including those for whom actual competition is not yet a factor, Ameritech Corporation could effectively protect its existing noncompetitive customer base by causing customers who require a specific competitive response to migrate from Ameritech Michigan to ACI. Further, in Dr. Selwyn's opinion, any benefit to consumers from ACI's entry into the marketplace is not only small in absolute terms, but also dwarfed in comparison to the scope and magnitude of the potential harm to customers and competitors.

The Commission also finds that the testimony offered by Dr. Paul Teske, Associate Professor of Political Science and Public Management of the State University of New York at Sunny Brook, supports the conclusion that it would be contrary to the public interest for ACI to possess a license to provide basic local exchange service prior to receiving authorization from the FCC to provide interLATA service. Dr. Teske, who testified on behalf of TCG, described

Ameritech Michigan's incentives to provide service in ways that will discriminate in favor of ACI. According to Dr. Teske, customers will be adversely affected by any effort to thwart the development of competition in Ameritech Michigan's service area. Dr. Teske explained that customers may experience excessive rates and may also suffer due to the absence of the non-price benefits of competition such as higher quality of service levels.

As explained by Dr. Teske, Ameritech Corporation's incentive to create a duplicate affiliate to resell local exchange service is its ability to segment the market to its advantage. Dr. Teske explained that a joint effort by Ameritech Michigan and ACI to preserve market share and delay competition would divide Ameritech Michigan's ratepayers into two groups. Customers in areas where Ameritech Michigan and ACI act in concert to thwart competition may temporarily receive lower local exchange rates from one of those companies. However, Dr. Teske indicated that customers and areas having no competitive pressures would be at risk for rate hikes due to "geographic deaveraging."

Dr. David J. Teece, the Mitsubishi Bank Professor of the Haas School of Business at the University of California-Berkley and a Director of the Institute for Management, Innovation, and Organization, testified on behalf of ACI that it would be unlikely for Ameritech Michigan and ACI to attempt to thwart competition through any of the anticompetitive mechanisms described by Drs. Selwyn and Teske. According to Dr. Teece, under the current regulatory scheme established by the MTA, Ameritech Michigan has no economic incentive to use cross-subsidization to favor ACI because the MTA limits prices through a system of price caps. Further, he insisted that Ameritech Corporation has no incentive to underwrite the below cost

provision of services by ACI from its other operations, because this would simply cause the entire corporation to lose money.

Dr. Teece also indicated that Ameritech Michigan and ACI have no economic incentive for using predatory pricing to drive competitors out of the market. According to Dr. Teece, a successful predatory pricing strategy requires that the predator must be in position to drive its rivals out of the marketplace and keep them out long enough to raise prices sufficiently to recoup the losses incurred through the predation strategy. Arguing that Ameritech Michigan and ACI lack the ability to drive AT&T out of the telecommunication marketplace, Dr. Teece insists that they have no incentive to use predatory pricing in an anticompetitive manner.

Although Dr. Teece testified that the concerns raised by Drs. Selwyn and Teske should be discounted by the Commission because they involve abstract forms of misconduct that are not likely to occur, the Commission finds that such concerns should not be so easily dismissed. Indeed, the ALJ specifically found that "Ameritech's past conduct has been less than exemplary." The Commission is not persuaded by Dr. Teece's assurances that Ameritech Michigan and ACI lack sufficient motivation to engage in anticompetitive conduct in the future. Rather, given the potential for disruption in the basic local exchange marketplace and the lack of evidence to establish that any competitive advantage would be furthered by granting ACI a license to provide basic local exchange service in Ameritech Michigan's service area prior to its authorization to provide interLATA service, the Commission finds that ACI has failed to prove that a grant of authority under such circumstances would not be contrary to the public interest.<sup>2</sup>

---

<sup>2</sup>Because the Commission's concerns are limited to Ameritech Michigan's service area, the Commission finds that it would not be contrary to the public interest to authorize ACI to immediately commence providing basic local exchange service in GTE's service area.

However, the Commission finds that the second scenario, which involves ACI's receipt of a license to provide basic local exchange service in Ameritech Michigan's service area simultaneously with its authorization by the FCC to provide interLATA service, presents an entirely different issue.

It is well established in the record that AT&T, MCI, TCG, and others are positioning themselves to compete with Ameritech Michigan in the provision of basic local exchange service in Ameritech Michigan's service area. It is equally well established that ACI's primary motivation in seeking a license to provide basic local exchange service is to compete with AT&T, MCI, TCG, and others for customers who desire to purchase all of their telecommunication services from a single provider. Accordingly, despite evidence that ACI will not act as a true competitor to Ameritech Michigan, the Commission is persuaded that the ALJ correctly determined that ACI's presence in the general telecommunication marketplace as a provider of bundled services will enhance competition by adding another option for customers who desire the benefits of bundled services and one-stop shopping.

To receive authorization to provide interLATA service, a RBOC is required to establish that it has fulfilled all of the conditions set forth in Section 271 of the FTA. Among other things, the RBOC must convince the FCC<sup>3</sup> that it has met the requirements of the 14 point competitive checklist contained in Section 271(c)(2)(B), which provides that a RBOC will be found to have met the requirements of the competitive checklist only if access and interconnection services provided or generally offered by the RBOC meet the following requirements:

---

<sup>3</sup>In reaching its determination, the FCC is required to consult with the Commission. In furtherance of this role, the Commission has commenced a proceeding, which has been docketed as Case No. U-11104.

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to -

(I) 911 and E911 services;

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(III) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

(xi) Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).

(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).

(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

Section 271(c)(2)(B) of the FTA.

Because compliance with the competitive checklist is a prerequisite for ACI to be able to offer interLATA service, the Commission's linkage of ACI's right to commence providing basic local exchange service in Ameritech Michigan's service area to the FCC's authorization of ACI to provide interLATA service ~~means that the public~~ will be assured that the telecommunication marketplace in which ACI will operate will have obtained at least the level of competition required by Section 271(c)(2)(B) of the FTA.

In reaching its decision, the Commission places emphasis on the differences between the current levels of competition in the local exchange and long distance markets. There is virtually no competition in local exchange markets at this time. However, competition does exist in the interLATA market. Further, whereas ACI's entry into only the local marketplace may well thwart competition, its simultaneous entry into both the local and interLATA markets as a provider of bundled services enhances competition. ~~Accordingly, the Commission finds that granting ACI a license to provide basic local exchange service in Ameritech Michigan's service area that will become effective when ACI is authorized to offer interLATA service would not be contrary to public interest.~~

### Conditions

Despite expressing numerous concerns over the prospect of ACI's entry into the telecommunication marketplace, in the end almost every party supported granting ACI a license to provide local exchange service, provided that adequate conditions were placed on the license to prevent potential abuses.<sup>4</sup> The ALJ found that none of the proposed conditions should be adopted by the Commission.

---

<sup>4</sup>TCG continues to maintain that the Commission should simply reject the application.

In their exceptions, the Staff and intervenors urge the Commission to reject the ALJ's recommendation. They insist that the past conduct of Ameritech Corporation and Ameritech Michigan strongly suggests that ACI will carry on in the corporate tradition of thwarting competition at every opportunity. They maintain that existing federal and state laws will not prevent ACI from engaging in anticompetitive conduct and that the attachment of conditions to ACI's license may lessen the likelihood that they will need to resort to costly and time consuming complaint procedures or antitrust actions.

In reply, ACI maintains that there are two reasons why the Commission should not place conditions on its license. First, ACI insists that the Commission has no legal authority to place conditions on a license. Second, according to ACI, the FTA and the MTA, which were enacted for the purpose for promoting robust competition in all telecommunication markets, already contain sufficient safeguards to protect customers and other providers. ACI stresses that none of the safeguards proposed by the Staff and intervenors is necessary because the anticompetitive behavior feared by those parties is already banned by existing law. Accordingly, ACI insists that the ALJ was correct in concluding that its application should be granted without restrictions.

The Commission's findings pursuant to Section 302(1)(b) of the MTA with respect to the negative effect that a grant of this application will have on the public interest necessitate the attachment of a provision that precludes ACI from entering the local exchange market in Ameritech Michigan's service area until such time that it receives authority from the FCC to enter the ~~interLATA~~ market in that area. In adopting this provision, the Commission rejects ACI's contention that the Commission lacks authority to issue a Section 302 license that is subject to any type of restriction or condition. In the instant case, the Commission has deter-



mined that it is not in the public interest to grant a license in Ameritech Michigan's service area that is not subject to this condition. Accordingly, acceptance of ACI's position would mean that the Commission would have to deny ACI's application at this time and reconsider the matter anew after ACI is authorized by the FCC to enter the interLATA market. Because one of the acknowledged purposes of the recent amendments to the MTA is to streamline regulation, it is readily apparent that ACI's position regarding the Commission's legal authority to adopt a restriction or condition is out of step with the Legislature's intent. Further, courts have ruled on numerous occasions that an administrative agency's authority to place a condition on a license that protects the public interest is inherent in the licensing process. Indeed, as pointed out by the United States Supreme Court in Frost v Railroad Commission of California, 271 US 583; 486 S Ct 605; 70 L Ed 1101 (1926), as a general rule, an agency that has the power to deny a license may grant it upon such conditions as it sees fit to impose in order to protect the public interest. Accordingly, the Commission finds not only that it has the authority to impose restrictions on licenses, but also that the provision regarding the effective date of ACI's license is necessary to protect the public interest.

However, the Commission is not persuaded that any of the other conditions recommended by the Staff and intervenors should be adopted at this time. Those conditions were proposed primarily because the parties were concerned that the remedies that are contained in the existing federal and state laws might prove to be costly and time consuming to pursue. However, as noted by the ALJ, the Staff and intervenors have not demonstrated that any of the existing enforcement provisions are inadequate. The Commission finds that additional conditions should not be placed on ACI's license simply to convenience another party. This is particularly true in

light of the direction in Section 101(2)(c) of the MTA, which requires the Commission to place greater reliance upon existing antitrust, consumer protection, and fair trade provisions for safeguarding competition and consumers. Accordingly, the Commission finds that the additional conditions suggested by the Staff and intervenors should be rejected.<sup>5</sup>

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17101 et seq.
- b. ACI has sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license.
- c. Granting ACI a license that allows it to provide basic local exchange service within the service area of GTE and that is effective immediately is not contrary to the public interest.
- d. It would be contrary to the public interest to grant ACI a license that authorizes it to provide basic local exchange service within the service area of Ameritech Michigan without appropriate safeguards.

---

<sup>5</sup>The Commission has acted on a number of other applications for licenses to provide basic local exchange service. In so doing, the Commission has routinely clarified that the licenses would be subject to specific regulatory requirements. A list of these requirements, which are sometimes referred to as the "statutory conditions," is attached to this order as Exhibit A. In paragraph 15 of its application, ACI states that it will abide by these requirements.

e. Granting ACI a license that allows it to provide basic local exchange service within the service area of Ameritech Michigan that is not effective until the FCC authorizes Ameritech Michigan to provide interLATA service through ACI is not contrary to the public interest.

f. ACI should provide basic local exchange service in accordance with the regulatory requirements specified in the MTA.

g. Before commencing service, ACI should submit its tariff to reflect the scope of the services that are offered.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan Communications, Inc., is granted a license that authorizes it to provide basic local exchange service within the service area of GTE North Incorporated.

B. Ameritech Communications, Inc., is granted a license that authorizes it to provide basic local exchange service within the service area of Ameritech Michigan subject to a provision that the license is not effective until the Federal Communications Commission authorizes it to provide interLATA service.

C. Ameritech Communications, Inc., shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCL 484.2102 et seq.; MSA 22.1469(101) et seq., which are attached to this order as Exhibit A.

D. Before commencing service, Ameritech Communications, Inc., shall submit its tariff to reflect the scope of the services that it will offer.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ John G. Strand  
Chairman

I concur in part, and dissent in part,  
as discussed in my separate opinion.

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of August 28, 1996.

/s/ Dorothy Wideman  
Its Executive Secretary

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
AMERITECH COMMUNICATIONS, INC.,	)	
for a license to provide basic local exchange	)	Case No. U-11053
service in Ameritech Michigan and GTE	)	
North Incorporated exchanges in Michigan.	)	
<hr/>	)	

OPINION OF COMMISSIONER JOHN C. SHEA  
CONCURRING IN PART AND DISSENTING IN PART

(Submitted on August 28, 1996 concerning order issued on same date.)

The grant or denial of a license for basic local exchange service is governed by Article 3 of the Michigan Telecommunications Act, 1995 PA 216, MCL 484.2101 et seq; MSA 22.1469(101) et seq. (the "Act"), and specifically, Section 302 of the Act. That section requires the Commission to approve an application for a license if the Commission finds the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographical area of the license.

(b) The granting of a license to the applicant would not be contrary to the public interest.

Section 302(1).

The Proposal for Decision found that ACI met the standard in Section 302(1), supra, see, Order at 12, and concluded that a license should be granted. There is no provision in this section for the imposition of conditions, such as contemplated by the majority.

The majority has rightly determined that the appropriate benchmark for determining the effect that a grant or denial of ACI's application would have on the public interest is set forth in MCL 484.2101(2); MSA 22.1469(101)(2), which reads in part as follows:

- (a) Ensure that every person has access to basic residential telecommunication service.
- (b) Allow and encourage competition to determine the availability, prices, terms, and other conditions of providing telecommunication services.
- (c) Restructure regulation to focus on price and quality of service and not on the provider. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide safeguards for competition and consumers.
- (d) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state through incentives to providers to offer the most efficient services and products.
- (e) Improve the opportunities for economic development and the delivery of essential services including education and health care.
- (f) Streamline the process for setting and adjusting the rates for regulated services that will ensure effective rate review and reduce the costs and length of hearings traditionally associated with rate cases.
- (g) Encourage the use of existing educational telecommunication networks and networks established by other commercial providers as building blocks for a cooperative and efficient statewide educational telecommunication system.
- (h) Ensure effective review and disposition of disputes between telecommunication providers.

MCL 484.2101(2); MSA 22.1469(101)(2).


Section 101(2) of the Act indicates the Legislature's determination that the public interest involves many factors, such as the introduction of new services, the entry of new providers, the development of new technologies, and increased investment in the telecommunication infrastructure. Accordingly, the proper focus in this proceeding should be upon

all of the factors set forth in Section 101(2) of the Act, not simply issues regarding the effect that one additional licensee will have on competition in a particular segment of the telecommunication market.

Read together, Sections 101(2) and 302 of the Act require the conclusion that, if ACI has met the standard for licensure, it should receive a license, and its future conduct should be governed, not by conditions imposed by this Commission, but by the dictates of other law.

I believe that the Act charts a clear and unmistakable -- and for the Commission, mandatory -- course for the regulation of telecommunication providers in this state for the next five years. Moreover, the recent pattern of wholesale recodifications of the law accompanied by use of relatively short sunset provisions has signaled the Legislature's intention to oversee and direct many aspects of the evolution of telecommunication regulation from the traditional rate case methodology to a free market system. In so doing, the Legislature has emphasized that the Commission's traditional role should incorporate a greater reliance upon the existing state and federal laws regarding antitrust, consumer protection, and fair trade legislation as safeguards for competition and consumers. Accordingly, I believe that adoption of conditions in the majority opinion runs contrary to the direction intended by the Legislature.

Based on the foregoing, I would grant a license without any conditions.

  
\_\_\_\_\_  
John C. Shea, Commissioner

LIST OF STATUTORY CONDITIONS

As a provider of basic local exchange service, Ameritech Communication, Inc., is subject to:

- 1) The reporting requirements that are specified in MCL 484.2202(a); MSA 22.1469(202)(a).
- 2) The tariff filing requirements for regulated services that are specified in MCL 484.2202(b); MSA 22.1469(202)(b) and as delineated further by the Commission in Attachment A of the December 22, 1992 order in Case No. U-10064.
- 3) The Quality of Service Standards that are required by MCL 484.2202(c); MSA 22.1469(202)(c) and that were formally promulgated by the Commission in Case No. U-11040 and which became effective July 17, 1996.
- 4) The costing procedures that were established by the September 8, 1994 and November 10, 1994 orders in Case No. U-10620.
- 5) The assessment requirements as specified in MCL 484.2211; MSA 22.1469(211).
- 6) The prohibitions delineated in MCL 484.2305; MSA 22.1469(305) and MCL 484.2502; MSA 22.1469(502).
- 7) The cross-subsidization prohibitions and the asset and employee transfer requirements that are specified in MCL 484.2308; MSA 22.1469(308).
- 8) The imputed access charge requirements that are specified in MCL 484.2311(1); MSA 22.1469(311)(1).
- 9) The resale procedures and standards that are specified in MCL 484.2311(3); MSA 22.1469(311)(3).
- 10) The requirements that are related to the withdrawal of basic local exchange service that are specified in MCL 484.2313; MSA 22.1469(313).
- 11) The obligation to offer basic local exchange service options for residential customers in accordance with MCL 484.2304b(1); MSA 22.1469(304b)(1).
- 12) The obligation to provide local directory assistance, a free annual printed telephone directory, and free 900 prefix call blocking pursuant to MCL 484.2309; MSA 22.1469(309).



- 13) The obligation to provide services for the hearing impaired pursuant to MCL 484.2315; MSA 22.1469(315) and the Commission's orders in Cases Nos. U-10086 and U-10210.
- 14) The obligation to provide lifeline service pursuant to MCL 484.2316; MSA 22.1469(316) and the May 6, 1992 order in Case No. U-10091.
- 15) The obligation to provide emergency or 9-1-1 service in accordance with MCL 484.1101 et seq.; MSA 22.1467(101) et seq.
- 16) The obligation to abide by the intraLATA dialing parity standards required by MCL 484.2312a-2312b; MSA 22.1469(312a)-(312b) as interpreted by the Commission's orders in Case No. U-10138.
- 17) The obligation to keep its accounts, books of accounts, and records in the manner to be determined by the Commission's final order in Case No. U-11103 for the purpose of determining the total service long run incremental costs and imputation requirements in accordance with MCL 484.2202(a); MSA 22.1469(202)(a).
- 18) The Privacy Standards that are required by MCL 484.2503; MSA 22.1469(503) and that were formally promulgated by the Commission in Case No. U-11042 and which became effective July 17, 1996.
- 19) The Billing Standards that are permitted by MCL 484.2213(1); MSA 22.1469(213)(1) and that were formally promulgated by the Commission in Case No. U-11043 and which became effective July 17, 1996.
- 20) The interconnection provisions contained in Article 3A of 1991 PA 179, as amended, being MCL 484.2351 to 2363; MSA 22.1469(351) to (363).